

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

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|--------------------------|---|------------------------|
| PHILLIP MARTIN, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. CIV-06-1117-T |
| |) | |
| CORNELL COMPANIES, INC., |) | |
| |) | |
| Defendant. |) | |

ORDER

The matter before the Court is Plaintiff's *pro se* "Motion of Objection and Brief in Opposition to Report and Recommendation on Amended Motion for Default Judgment" [Doc. 64], which is construed as a timely objection to the Report and Recommendation of United States Magistrate Judge Robert E. Bacharach issued April 24, 2007 [Doc. 62]. The Court must make a de novo determination of portions of the Report to which specific objection is made, and may accept, modify, or reject the recommended decision. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).


In the Report, Judge Bacharach finds no basis for a default judgment under Fed. R. Civ. P. 55(b) and thus recommends denial of Plaintiff's Amended Motion for Default Judgment and Declaratory Relief [Doc. 48]. Judge Bacharach specifically reserves a ruling on Plaintiff's request for an order deeming true the matters addressed in his Judicial Notice of Adjudicative Facts [Doc. 7]. *See* Report at 1, n.1.¹ Thus to the extent Plaintiff complains that Judge Bacharach overlooked this aspect of his request for declaratory relief, the Court finds Plaintiff's objection to be ill-founded.

¹ This ruling was made by the Order of April 25, 2007 [Doc. 63], granting Plaintiff's request.

Liberally construed, Plaintiff objects to Judge Bacharach's finding that the prerequisites of Rule 55(a) to the entry of a judgment by default under Rule 55(b) are not satisfied. The Court finds no merit in this contention. Defendants did not fail to plead or otherwise defend this action. Within the time their answer was due pursuant to Fed. R. Civ. P. 12(a)(1)(B),² Defendants moved for an extension of time, which was granted. *See* Order 1/31/07 [Doc. 37]. Although Plaintiff may believe this extension was unwarranted or improper, Defendants nevertheless had until February 12, 2007, to file an answer or a dispositive motion. On that date, a Special Report pursuant to *Martinez v. Aaron*, 570 F.2d 317 (10th Cir. 1978), and a Motion for Summary Judgment were jointly filed. Thus no default occurred.

Therefore, the Court ADOPTS the Report and Recommendation [Doc. 62] in its entirety and DENIES the Amended Motion for Default Judgment [Doc. 48].

IT IS SO ORDERED this 9th day of May, 2007.



RALPH G. THOMPSON
UNITED STATES DISTRICT JUDGE

² Defendants timely complied with Plaintiff's requests to waive service of summonses and thus had sixty days from November 21, 2006, or until January 22, 2007, to answer or defend.